



# Information Item

Date: February 23, 2010

To: Mayor and City Council  
From: Eileen Fogarty, Planning and Community Development Director  
Subject: Development Agreement Update and Current Status

## Introduction

This information item updates the monitoring status of the City's Development Agreements and forwards an attached chart for Council's information that contains a list of the development agreements and their current status with respect to compliance. Council may use this information in their review of existing Development Agreements.

## Discussion

In preparing the attached chart, the City Planning Division has devoted significant staff time and has comprehensively reviewed for compliance each of the eleven Development Agreements currently in effect. Periodic monitoring of a Development Agreement also occurs at various stages of the projects through the following mechanisms:

- Annual Reports  
This past year PCD staff initiated a comprehensive review of all existing Development Agreements. Staff has requested annual compliance reports from all eleven constructed Development Agreement projects.
- Estoppel Request  
In instances where the property undergoes a real estate transaction, an estoppel request is filed by the owner or buyer. An estoppel requires the City to determine whether the project is in compliance with the Development Agreement. An estoppel request is a common trigger for monitoring compliance and can result in the request for a compliance report if one is due and has not yet been submitted.

- Building Permits & Inspections  
During the plan check process, the project is reviewed for compliance and consistency with development agreement conditions and fee requirements. Plan check allows for staff to monitor conditions related to aesthetics, materials, specific parking requirements, structural features depicted in the detailed mechanical plans and mitigation measures. Plans that are not consistent with the conditions of the development agreement will not be issued a building permit unless all outstanding issues are resolved and required fees paid.
- Certificate of Occupancy  
Prior to issuance of a Certificate of Occupancy for the project, City staff review the Development Agreement and visit the site for a final inspection to confirm consistency with approved plans and the installation any required off-site improvements. Staff also checks that all payments and fees required prior to Certificate of Occupancy have been paid. No Certificate of Occupancy is issued unless the provisions of the Development Agreement have been met and the project is in compliance.
- Zoning Conformance  
Zoning Conformance applications are routinely requested from lenders and appraisers evaluating the subject properties. Staff reviews and prepares a letter indicating outstanding compliance issues as part of the letter request.

## **Summary**

As noted above, staff has requested annual compliance reports from all eleven constructed Development Agreement projects. Staff has received compliance reports from all parties except The Arboretum, Lantana East and Lantana South. The Arboretum compliance report was due in November 2009 and the compliance reports for the Lantana projects were due in January 2010.

Staff has reviewed all compliance reports received to date. Five projects have been deemed in compliance. Staff is still reviewing recently submitted annual reports for compliance (Sheraton Delfina – 530 Pico Blvd., formerly Bayview Hotel and Maguire Thomas at 1733 Ocean Avenue) and continues to review the compliance report submitted by St. Johns Health Center in November 2009. The City recently filed a law suit against the owners of the Arboretum for non-compliance with their affordable housing obligation and their compliance report remains outstanding. Staff is anticipating

receipt of the compliance reports from the Lantana East and Lantana South projects within 30 days.

Prepared by: Paul Foley, Principal Planner  
City Planning Division

Attachment: Development Agreement Fees/Payments Update Chart – 2010

## Development Agreement Fees/Payment Update 2010

DA Name	Type of Improvement/ Fee Mitigation	Fee Status	Compliance Report Status
<b>Bayview CA Limited Partnership</b> <i>530 Pico Boulevard</i>	1. Tide Shuttle Program  2. Civic Enterprise Fund	\$50,000 + CPI; Paid annually to Big Blue Bus  See Formula in DA; Fees are to be paid after City's investment of \$1 million in Civic Auditorium  <i>No Fees Owed</i>	Compliance report due annually from the date DA was executed (6-29-83.) Compliance report received 2/11/10. In review by staff.
<b>Yahoo Center (Previously MGM, Colorado Place I and II)</b> <i>2600-2800 Colorado Avenue</i>	<u>Housing Requirements:</u> Provided 51 out of the 100 housing units at Colorado Place Phase III (Arboretum) paid in-lieu fee for remaining 49.  <u>Arts &amp; Social Service:</u> Phase 1 Formula for Fee  Phase 2 Formula for Fee	\$2,652,909; Paid  \$1,376,874.55 OR satisfied with in kind services; Satisfied with In-kind services \$1,421,837 OR satisfied with in kind services; ONGOING with In-kind services provided  <i>No Fees Owed</i>	Compliance report due annually from the date DA was executed (10-27-81). Compliance Report received on 8/25/09. Deemed compliant on 12/8/09.
<b>Arboretum (Previously Colorado Place Phase III)</b> <i>2000 Colorado Avenue</i>	<u>Parking &amp; Traffic:</u>  Traffic Improvement Fee Traffic Signal @ 20 <sup>th</sup> & Broadway	\$5 million; Paid \$75,000; Paid	Compliance report due annually from the date DA was executed (12-16-87). Requested compliance report on 11/16/09, due 12/16/09.

## Development Agreement Fees/Payment Update 2010

DA Name	Type of Improvement/ Fee Mitigation	Fee Status	Compliance Report Status
<p><b>(Arboretum -Previously Colorado Place Phase III Cont'd.)</b></p>	<p><u>Housing Requirements</u></p> <p>Advance payment for the first 448,250 SF</p> <p><u>Arts &amp; Social Service</u></p> <p>Child Care contribution</p> <p><u>Housing &amp; Parks Mitigation</u> (Arboretum Courtyard)</p> <p><u>Public Artwork</u></p> <p>Pledge at least \$250,000 to SM Arts Foundation for art to be placed in public area of project site</p> <p><u>Parks &amp; Rec Fee</u></p> <p>\$600/unit</p>	<p>Pending Lawsuit</p> <p>\$2.2 Million; Paid</p> <p>\$250,000; Paid in 6 installments</p> <p>\$721,318.08; Paid</p> <p>Completed installation of art at corner of Olympic &amp; Cloverfield – sculpture fountain</p> <p>\$210,000; Paid</p> <p style="text-align: center;"><i>No Fees Owed</i></p>	<p>Compliance report past due. City filed law suit for non-compliance with affordable housing obligation.</p>
<p><b>NME (MTV Bldg)</b> 2700 Colorado Avenue</p>	<p><u>Homeless Services Fee</u></p> <p><u>Parks &amp; Rec. Fee</u></p> <p><u>Housing Requirements</u></p> <p><u>SM Arts Foundation</u></p>	<p>\$25,000; Paid</p> <p>\$750,000; Paid</p> <p>\$1.5 million; Paid</p> <p>\$25,000; Paid</p> <p style="text-align: center;"><i>No Fees Owed</i></p>	<p>Compliance report due annually from the date DA was executed (4/16/82). Compliance Report received 10/1/09. Deemed compliant on 11/09/09.</p>

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DA Name	Type of Improvement/ Fee Mitigation	Fee Status	Compliance Report Status
<p><b>Paseo Del Mar</b>  1541 Ocean Avenue</p>	<p><u>Arts &amp; Social Service Fee</u></p>	<p>Art installation to be provided on-site; Art installation provided in common area</p> <p style="text-align: center;"><i>No Fees Owed</i></p>	<p>Compliance report due annually from the date DA was executed (1/26/82). Compliance Report received 9/18/09. Deemed Compliant.</p>
<p><b>St. Johns Health Center</b> 1328 22nd Street Campus includes areas between 20th St. &amp; 23rd St., Arizona Ave. &amp; Santa Monica Blvd., and parcels south of Santa Monica Blvd.</p>	<p><u>Reimbursement</u> After completion of Phase I, City is to determine if listed mitigation measures are necessary and will be reimbursed for the actual cost of installing such measures</p> <p><u>Phase 1 - OSHPD payment</u></p> <p><u>EIR Mitigation</u> NPDES Compliance and City's Urban Runoff Pollution Ord.</p>	<p>TBD, as Phase I is still under construction; Phase 1 under construction</p> <p>\$332,000 (1998 estimate); Paid</p> <p>\$641,000 in lieu of performing off-site improvements; Paid</p>	<p>Compliance report due July 1<sup>st</sup> of each calendar year. Compliance Report submitted on 11/06/09. In review by staff.</p>

## Development Agreement Fees/Payment Update 2010

DA Name	Type of Improvement/ Fee Mitigation	Fee Status	Compliance Report Status
(St. Johns Health Center Cont'd)	<u>Community Benefits Program</u>	<p>\$30,000 in lieu fee used for citywide filtration project; Paid</p> <p>\$732,000 adjusted by 1.5% comp. annually for 55 years in payment OR satisfied with in kind services; St. John's submitted financial documentation in Community Benefits Report that demonstrates the value of in kind services exceeds required amount for this year</p>	
<p><b>Watergarden Phases I &amp; II</b>            1620 26<sup>th</sup> Street &amp; 2425 Olympic Boulevard</p>	<p><u>Traffic Improvement Fee</u>            Phase 1</p> <p>Phase 2            Permit Parking District</p> <p><u>Housing Requirements</u>            Housing &amp; Parks Fee</p> <p><u>Arts &amp; Social Services</u>            Santa Monica Arts Foundation</p> <p>Payment for Homeless Services</p> <p><u>Sewage &amp; Water Conservation</u>            Payment</p>	<p>\$3.95 million; Paid</p> <p>\$2,458,486; Paid            \$101,535; Paid</p> <p>\$3,811,307; Paid</p> <p>\$150,000; Paid</p> <p>\$300,000; Paid</p> <p>\$410,000; Paid</p>	<p>Compliance report due annually from the date DA was executed (3/23/88). Compliance report submitted 8/4/09. Deemed compliant 9/18/09.</p>

## Development Agreement Fees/Payment Update 2010

DA Name	Type of Improvement/ Fee Mitigation	Fee Status	Compliance Report Status
<b>Maguire Thomas Office Bldg.</b> <i>1733 Ocean Avenue</i>	<u>Housing &amp; Parks</u> Impact Mitigation Fee  <u>Other</u> Civic Center/Oceanfront Improvement Special Fund	\$2.25/SF for first 15,000 SF office/med; \$5/SF for remaining net rentable office/med SF; Paid  \$250,000 deposited prior to Certificate of Occupancy; Paid  <p style="text-align: center;"><i>No Fees Owed</i></p>	Compliance Report due annually from date of DA amendment (12/95). Received compliance report on 1/14/10. In review by staff.
<b>Rand</b> <i>1776 Main Street</i>	Early Childhood Education Center	\$500,000 prior to issuance of Certificate of Occupancy; Paid  <p style="text-align: center;"><i>No Fees Owed</i></p>	Compliance report due annually (does not specify a date). Staff will request next compliance report on 8/4/10 – one year from this year’s request. RAND submitted Compliance Report on 10/5/09. Deemed compliant on 11/04/09.



## Development Agreement Fees/Payment Update 2010

DA Name	Type of Improvement/ Fee Mitigation	Fee Status	Compliance Report Status
<b>(Lantana South</b> <i>3003 Exposition Boulevard Cont'd)</i>	Payment Edison School Playground Partnership (Section 4 of Exhibit G) Arts Fee Funding to monitor Neighborhood Traffic Protection program	\$35,600; Paid; 4 annual payments anticipated for next 4 years \$90,000; Paid \$200,000 payment received. Additional costs possible after completion of follow-up analysis	